



ISSUES IN OWNERSHIP OF REAL ESTATE

CANADA – MANITOBA Thompson Dorfman Sweatman LLP

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1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Fee Simple ownership is the principal form of ownership in Manitoba. Other forms of ownership for which titles may be issued are leaseholds and air space parcels.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

A transfer of land is used to convey registered ownership of real estate in Manitoba. The form of transfer of land is prescribed by regulation. If the form of ownership is an unregistered leasehold, an assignment of lease may be used to transfer that leasehold interest, notice of which may be registered by way of caveat.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

The ownership of real property is recorded and searched at the Land Titles Office for the district in which land is situate. In Manitoba, there are six such districts. Two different types of title are kept at the Land Titles Office, Paper Title and Electronic Title. The majority of titles in Manitoba are Electronic.

Electronic Titles can searched by accessing the Land Titles Office on-line database, while Paper Titles must be examined by either personally inspecting the title at the Land Titles Office; ordering a photocopy of the Paper Title; or ordering a certified copy of the Paper Title. As a general rule, the searches are conducted by lawyers or law clerks and assistants working for the lawyers.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

The Real Property Act (Manitoba) states that every certificate of title, subject to a number of enumerated exceptions, is conclusive evidence at law and in equity that the person named on the certificate is entitled to hold the land in question. Notwithstanding, a purchaser may also wish to obtain title insurance in the event that any defects in title are discovered. In Manitoba, a title insurance policy for residential property is approximately \$200.00.

Title insurance is also available for commercial properties; however the price is variable depending on the value of the property and type of policy. For example, in an Owner's Policy (i.e.: no mortgage needed for the purchase) the cost of the policy will be dependant upon the purchase price of the property. On the other hand, if a Lender's Policy is purchased (i.e.: the purchaser requires a mortgage) the policy will be dependent upon the value of the mortgage.

A basic Owner's Policy will offer coverage for title or interest vesting in the estate which is other than as stated; defect in charge, lien or encumbrance on the title; unmarketability of the title; and lack of right of access to and from the land.

The Western Law Societies Conveyancing Protocol is a second option which offers purchasers protection similar to that of title insurance. The Conveyancing Protocol will indemnify loss suffered by a purchaser resulting from an intervening registration at the Land Titles Office.

Another form of assurance is to have a Solicitor provide a report on title or Title Opinion. A Title Opinion is states that the client has received good and marketable title, based on a review of the due diligence searches conducted on the real estate. The client may seek compensation for losses suffered via the Solicitor's professional indemnity policy, if the Solicitor has been negligent in providing the Title Opinion.

As discussed above, The Real Property Act (the “Act”) provides that every certificate of title is evidence of a purchaser’s entitlement to hold title to the property in question. The effect of this provision allows an individual to make a claim against the Government of Manitoba, for any errors made by a Land Titles Office in the transfer and issuance of title. The Assurance Fund, established under the Act for the purpose of satisfaction of these claims, is capped at \$75,000.00. However, in reality the size of the fund is actually \$125,000.00. In the event that a judgement exceeds the \$75,000.00 amount, the shortfall will be paid out of the public funds of the government.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

Common forms of investment vehicles include General Partnerships, Limited Partnerships, Co-ownership, Trusts and Corporations. However, the most common form of entity used to own investment real estate is a Corporation. What is the most tax efficient manner to hold real estate will depend on the owner(s) and the circumstances of ownership.

It is also possible to have an investment vehicle own real property as a bare trustee. For example, a corporation may be the registered owner of land, but hold it in trust for others.

In the case of a Real Estate Investment Trust (REIT), the REIT will hold the land for the unit holders.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

The federal Income Tax Act contains a number of provisions regulating Real Estate Investment Trusts.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

As a general rule, Manitoba imposes a Land Transfer Tax upon every person who tenders for registration a Transfer of Land. The Land Transfer Tax is calculated pursuant to a sliding scale formula based on the Fair Market Value of the property.

A number of transactions which are exempt from the Land Transfer Tax. For example, situations wherein the transferred land is farm land, transferred from one farmer to another, and will continue to be used as farm land will be exempt from the Land Transfer Tax. Another example is an inter-spousal transfer.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In Manitoba, the transfer of an interest in a corporate entity which owns real estate will not attract Land Transfer Tax levied against the land.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The only land transfer tax in Manitoba is imposed by the Province. On a municipal level, there are a number of taxes which can be assessed against the value of the land such as a School Tax or a general Municipal Tax. These rates vary depending on the Municipality.

Real estate law does not vary among municipalities, as the law of property is governed by the Province of Manitoba. There are some peculiarities when dealing with land on First Nation (aboriginal) reserves.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The beneficial owners of the entity are not required to be disclosed as a matter of public record. However, if a shareholder owns more than ten percent of the issued voting shares in a corporation, they will be indicated on the annual return of the corporation filed in the Companies Office (Manitoba).